

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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ALEXANDER GOMEZ,

Plaintiff,

MEMORANDUM & ORDER
22-CV-277 (EK) (CLP)

-against-

WEST SHORE INN RESTAURANT, INC. and
THE WEST SHORE INN OF S.I. INC.,

Defendants.

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ERIC KOMITEE, United States District Judge:

The Court has received Magistrate Judge Cheryl Pollak's Report and Recommendation ("R&R") dated June 30, 2023. ECF No. 21. Judge Pollak recommends that I: (1) deny Plaintiff Alexander Gomez's motion for default judgment for lack of standing, and (2) grant Gomez thirty days from the date of this Order to file an amended complaint. Judge Pollak further recommends that, if Gomez fails to timely file an amended complaint or fails to cure the deficiencies identified in the R&R, I dismiss the action. No party has filed objections, and the time to do so has expired. Accordingly, the Court reviews Judge Pollak's recommendation for clear error on the face of the record. See Fed. R. Civ. P. 72(b) advisory committee's note to

1983 addition; accord *State Farm Mut. Auto. Ins. Co. v. Grafman*, 968 F. Supp. 2d 480, 481 (E.D.N.Y. 2013).

Having reviewed the record, I find no clear error and adopt the introduction section, factual and procedural background sections, and Part III of the R&R. Because I adopt the recommendation in Part III that the plaintiff lacks standing, I need not reach the recommendations set forth in the remainder of the R&R. Moreover, because Gomez has failed to establish standing under Article III of the Constitution, the Court lacks subject-matter jurisdiction to adjudicate this action, and the complaint must be dismissed. See *Cent. States Se. & Sw. Areas Health & Welfare Fund v. Merck-Medco Managed Care, L.L.C.*, 433 F.3d 181, 198 (2d Cir. 2005); *Cortlandt St. Recovery Corp. v. Hellas Telecomms., S.a.r.l*, 790 F.3d 411, 416-17 (2d Cir. 2015).

The motion for default judgment is therefore denied, and the complaint is dismissed. Gomez is granted thirty days from the date of this Order to file an amended complaint. If Gomez fails to file an amended complaint within the time

allowed, or fails to cure the deficiencies identified in the R&R, the case will be dismissed, and judgment will enter.

SO ORDERED.

/s/ Eric Komitee
ERIC KOMITEE
United States District Judge

Dated: August 18, 2023
Brooklyn, New York